

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID UNTIED,

Petitioner,

v.

WANZA JACKSON, Warden,

**Case No. 2:04-cv-511
JUDGE GRAHAM
Magistrate Judge ABEL**

Respondent.

ORDER

On September 9, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that this action be dismissed. Petitioner has filed objections to that *Report and Recommendation*. Petitioner objects to all of the Magistrate Judge's conclusions.

Petitioner complains that he was unable to file a traverse. He also objects to the Magistrate Judge's denial of his August 31, 2005, motion to amend the petition; however petitioner fails to indicate in what manner he wishes to amend the petition. Additionally, petitioner fails to indicate any additional arguments that he would have presented in a traverse, but could not.

As noted by the Magistrate Judge, all of petitioner's claims are procedurally defaulted due to his failure to file a timely appeal to the Ohio Supreme Court. Petitioner now argues that he was unable to file a timely appeal, because the state appellate court refused to rule on all of the claims presented in petitioner's appellate brief that exceeded the page limitation under Ohio law. *See Objections.* Petitioner also appears to argue that equitable tolling is appropriate, although the statute of limitations is not at issue. *Id.*

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed in the

Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**. The Clerk is **DIRECTED** to enter final judgment dismissing this action.

IT IS SO ORDERED.

s/James L. Graham

JAMES L. GRAHAM

United States District Judge

DATE: October 6, 2005